

**Interim Review of
Right-of-Way Acquisition and
Construction of Northbound I-405 at US-
101 Connector Gap Closure Project from
Greenleaf off-ramp to North of Ventura
Boulevard Undercrossing**

08-CAL-G03

APRIL 2009

MOU P0008347



Metro

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EXECUTIVE SUMMARY

At the request of the Project Manager, Robert Machuca, an interim review was completed by Los Angeles County Metropolitan Transportation Authority (Metro) Management Audit Services (Management Audit) for the Transportation Improvement Program (TIP) call for project Memorandum of Understanding (MOU) P0008347. This MOU is with State of California, Department of Transportation (Caltrans) for right-of-way acquisition and construction of Northbound Interstate 405 (NB I-405) at US-101 connector gap closure project from Greenleaf off-ramp to North of Ventura Boulevard under-crossing.

The MOU total project budget amount is \$45,698,600 which includes design, right-of-way support, right-of-way acquisition, construction support and construction cost. The scope of this review is limited to \$37,361,600 for right-of-way acquisition and construction cost. The project budget for right-of-way acquisition is \$8,859,600, which includes:

- \$4,996,600 or 56.4 percent of Prop C 25 percent fund;
- \$3,863,000 or 43.6 percent of Traffic Congestion Relief Program (TCRP) Fund.

The project budget for construction cost is \$28,502,000, which includes:

- \$3,091,000 or 10.84 percent of Prop C 25 percent fund;
- \$25,411,000 or 89.16 percent of Grant Anticipation Revenue Vehicle (GARVEE) Bond fund.

The period under review is June 30, 2004 to June 30, 2007. This interim review is based on the original MOU and amendment one in effect during the period under review.

The total project incurred cost of \$29,169,176 is from the MOU inception date of June 30, 2004 to July 31, 2007. The project incurred cost consists of \$5,144,930 for right-of-way acquisition and \$24,024,246 for construction. Based on this review we questioned \$398,642. The questioned cost consists of \$6,699 for non-allocable construction cost related to utility expenses and \$391,943 for cost incurred after the June 30, 2007 lapsing date. Therefore, the total allowable project cost for the period under review is \$28,770,534. Metro's share of the total allowable project cost is \$5,462,756 which includes \$2,901,741, or 56.4 percent and \$2,561,015, or 10.84 percent, for right-way-acquisition and construction cost. Caltrans has been reimbursed \$2,940,345 of the allowable project cost and no retention was withheld. For this interim review the remaining balance on the MOU is \$2,624,844 (\$8,087,600 - \$5,462,756).

During this review we found that Caltrans unilaterally decreased its Prop C funding requirement because the bid for the construction cost was lower than originally forecasted. Caltrans reduced the Prop C funds from \$3,091,000 to \$1,299,000 and reduced the allocation percentage for Prop C from 10.84 percent to 4.8 percent.

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Caltrans' representative advised us that the construction bid cost was lower than originally forecasted (see "Results of Review" section of this report) creating the need to lower the Prop C 25 percent funds allocation percentage. Caltrans also obtained funding from the City of Los Angeles, which was not listed as a source of funds in the MOU. Caltrans did not comply with the MOU terms for changing the funding source and allocation percentage. The MOU terms requires written agreement between both parties. We were advised that Metro's Project Manager is currently coordinating with Caltrans' Project Manager to amend the MOU to reflect the reduction in the Prop C 25 percent allocation and to extend lapsing date of the MOU.

INTRODUCTION

Background

This MOU is between the Caltrans and Metro. The objective of the project is for Right-of-Way acquisition and Construction of NB I-405 at US-101 Connector Gap Closure Project from Greenleaf off-ramp to north of Ventura Boulevard undercrossing. The project will alleviate heavy congestion and excessive weaving occurring at this location, improve transportation mobility, and enhance safety. The total estimated project cost is \$45,698,600 and Metro's share is \$8,087,600. The MOU commenced on June 30, 2004 and lapsed on June 30, 2007.

Objectives

The review objectives were to:

- Determine the allowability, allocability and reasonableness of the incurred cost.
- Determine whether costs incurred and billed were allowable under relevant cost standards and in compliance with the specific general terms of the MOU and project management guidelines.
- Determine whether costs incurred were properly and accurately charged to the MOU, were reasonable in amount, and were supported by documented evidence.
- Determine whether costs were properly recorded for reimbursement purposes and that reimbursements were received by Caltrans and the Metro's accounting records properly reflect these transactions.
- Determine whether invoices were submitted within the lapsing date and within the period for which the funds were programmed.

INTRODUCTION

Scope

The scope of this review is limited to \$37,361,600 for the right-of-way acquisition and construction cost and the amounts invoiced by Caltrans for costs incurred from June 30, 2004 to June 30, 2007.

We conducted this attestation review in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives. We used the cost principles contained in the Federal Acquisition Regulation (FAR) Subparts 31, and the MOU Provisions to evaluate and analyze the incurred cost.

The cost claimed is the responsibility of Caltrans. Our responsibility is to express a conclusion based on the review. The review report is intended solely for the use of Metro's management and should not be used for any other purpose without first consulting Management Audit.

Methodology

We selected invoices submitted by Caltrans and traced various costs included on the invoices to supporting documentation such as vendor's invoices. We reviewed the costs for allowability in accordance with applicable cost standards and compliance with the terms and conditions of the MOU. We also reviewed our internal accounting and grant records to determine if the amounts claimed for reimbursement, as represented by the invoices submitted by Caltrans, were actually paid.

RESULTS

Conclusion

Project Cost

The total project cost of \$29,169,176 was incurred from inception of the MOU to July 31, 2007. We questioned \$398,642, which consists of \$6,699 of construction cost for utility expenses that are not allocable to this MOU and \$391,943 of cost incurred after the lapsing date of June 30, 2007. Therefore, the allowable project cost is \$28,770,534, which includes \$5,144,930 right-of-way acquisition and \$23,625,604 construction cost. Metro's share in Prop C 25 percent fund of the total allowable project cost is \$2,901,741, or 56.4 percent and

RESULTS

\$2,561,015, or 10.84 percent, for right-way-acquisition and construction cost. Caltrans was reimbursed \$1,797,392 and \$1,142,953 for right-of-way acquisition and construction. No retention has been withheld. The remaining balance on this MOU is \$2,624,844 which includes \$2,094,859 and \$529,985 for right-of-way acquisition and construction, respectively.

We were advised by the Project Manager that an amendment extending the lapsing date to June 30, 2011 was executed after our interim review. We will determine the final allowable project cost when we perform a close-out review. See Appendix A for detailed result of review.

Compliance with MOU Terms

Caltrans is not in compliance with their MOU terms and conditions. For the period under review Caltrans has under-run the project cost by \$2,522,411 because Caltrans unilaterally changed the Prop C fund allocation percentage without written agreement from Metro's Project Manager. During this review we were advised by Caltrans that the estimated construction cost for this project was lower than originally anticipated. Therefore, Caltrans unilaterally revised the MOU project cost and reduced the Prop C fund allocation percentage from 10.84 percent to 4.8 percent. The MOU includes funds from both Prop C and GARVEE bond funds. Since the GARVEE bonds fund could not be reduced, Caltrans reduced the Prop C funds from \$3,091,000 to \$1,299,000 which reduced the Prop C fund allocation percentage. In addition, Caltrans obtained funding from the City of Los Angeles which is not listed as a source of funds in this MOU. See Appendix A for detailed result of review.

Section 11.1 of Part II – General Terms of the Financial Agreement (FA), of the MOU states, *"This FA, and its Attachments and the reference Guidelines, constitute the entire understanding between the parties with respect to the Project and the Funds. The FA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties."*

Recommendation

We recommend that Caltrans comply with the terms of the MOU and obtain mutual agreement in writing in regards to any changes to the funding allocation percentages. We also recommend that a close out review be conducted as early as possible to confirm whether there is a Prop C funds balance remaining on this project that may be eligible for reprogramming to other projects.

Management Response

Metro Project Manager concurred with the results and recommendations of the audit.

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Caltrans' Response:

In Caltrans' letter dated March 12, 2009, Caltrans disagreed with the recommendation to obtain mutual agreement in writing in regards to any changes to the funding allocation. Caltrans' response stated that, *"Caltrans believes that it did not violate the terms of the MOU because the lowest bidder's amount was less than the programmed amount. This resulted in a saving to capital costs. Caltrans believes that the MOU section cited by the auditors refers to changes that are beyond the original scope of the MOU. In this particular case, Caltrans believes that because there were no changes beyond the original scope of the MOU, it did not need to obtain mutual agreement in writing. Caltrans agrees with the recommendation that a close-out review be performed as early as possible."* Please see Appendix B for the letter.

Auditors' Rejoinder:

We disagree with Caltrans' explanation. The General Terms of the MOU states that any changes to the Funding Agreement (FA) shall not be amended without written agreement signed by both parties. We believe an amendment to the MOU is required before Caltrans declares the project complete and initiation of the final review for the project.

Rent Expenses

Caltrans does not have an allocation plan to allocate rent expense incurred by the Resident Engineer's (RE) office to fairly allocate these costs for projects sharing the same project field office. The current practice is to arbitrarily charge rent expense by randomly selecting projects to charge through out the fiscal year. There is no matching of these expenses to applicable projects in an objective and reasonable manner.

Contract Term Part II, section 5.2 of this MOU stated that Metro shall use applicable Federal Acquisition Regulations (FAR) in determining the reasonableness of project costs incurred. FAR Subpart 31.201-4, Determining allocability, states, *"A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received..."*

Caltrans did not allocate this expense to the MOU on the basis the benefit received by the applicable project. We believe that not having a proper allocation plan could result in over-billing of rent expense to Metro. For this MOU, the cost associated with the project is considered immaterial. However, we believe it should be noted in the event future cost becomes significant.

RESULTS

Recommendation


We recommend that Caltrans establish an allocation plan to allocate rent expenses to the construction projects based on a beneficial and causal relationship.

Management Response

Metro Project Manager concurred with the results and recommendations of the audit.

Caltrans' Response

In Caltrans' letter dated March 12, 2009, Caltrans agreed with our recommendation and stated that, *"Caltrans is in process of developing a new process to allocate rental expenses to all the projects that are benefiting from a particular RE's office. The method for allocating rent expenses will be based on a logical, proportional method such as each project's construction contract amount."* Please see Appendix B for the letter.



Ruthe Holden
Chief Auditor
March 2009

Audit Team:

Rey Alimoren
Andrew Lin
Kathy Knox

APPENDIX A

INTERIM REVIEW
 MOU P0008347
 RIGHT-OF-WAY ACQUISITION AND CONSTRUCTION OF
 THE NB I-405 AT US-101 CONNECTOR GAP CLOSURE
 SUMMARY OF PROJECT FUNDING AND EXPENDITURES
 FROM INCEPTION TO JULY 31, 2007

Description	Budgeted Costs	Percent on	Total Project Cost Per PCS	Allowable Project Cost	Payments	Over/(under)	MOU Balance
	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f = e - d</i>	<i>g = a - d</i>
MTA Programmed Fund							
Right-of-Way Acquisition:							
TCRP	\$ 3,863,000	43.60%	\$ 2,243,189	\$ 2,243,189	n/a		
Prop C 25%	4,996,600	56.40%	2,901,741	2,901,741	\$ 1,797,392	\$ (1,104,349)	\$ 2,094,859
Subtotal	<u>8,859,600</u>	<u>100.00%</u>	<u>5,144,930</u>	<u>5,144,930</u>	<u>1,797,392</u>	<u>(1,104,349)</u>	<u>2,094,859</u>
Construction Capital:							
GARVEE Bonds	\$ 25,411,000	89.16%	\$ 21,420,018	\$ 21,064,589	n/a		
Prop C 25%	3,091,000	10.84%	2,604,228	2,561,015	1,142,953	(1,418,062)	529,985
Subtotal	<u>28,502,000</u>	<u>100.00%</u>	<u>24,024,246</u>	<u>23,625,604</u>	<u>1,142,953</u>	<u>(1,418,062)</u>	<u>529,985</u>
TOTAL	<u>37,361,600</u>		<u>29,169,176</u>	<u>28,770,534</u>	<u>2,940,345</u>	<u>(2,522,411)</u>	<u>2,624,844</u>
Total Prop C	<u>\$ 8,087,600</u>		<u>\$ 5,505,969</u>	<u>\$ 5,462,756</u>	<u>\$ 2,940,345</u>	<u>\$ (2,522,411)</u>	<u>\$ 2,624,844</u>

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STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCITTA ARZ/NEGGER Director

DEPARTMENT OF TRANSPORTATION
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"Let's go faster"
Be energy efficient"

March 12, 2009

Mr. Robert Machuca
Project Manager
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza (MS 99-22-2)
Los Angeles, CA 90012-2952

Dear Mr. Machuca:

Thank you for the opportunity to respond to the draft audit report on the interim review performed on Memorandum of Understanding (MOU) P0008347 between the Los Angeles County Metropolitan Transportation Authority (Metro) and the California Department of Transportation (Caltrans). The purpose of this MOU was for right-of-way acquisition and construction of Northbound Interstate 405 at US-101 connector gap closure project from Greenleaf off-ramp to North of Ventura Boulevard under-crossing.

The purpose of the interim review was to determine the allowability, allocability, and reasonableness of invoices submitted by Caltrans for the period of June 30, 2004, to June 30, 2007. The scope of the review was limited to the right-of-way acquisition and construction costs of the MOU project, which had a \$37,361,600 budget.

Metro auditors concluded that out of the budgeted amount of \$37,361,600, the total project cost for right-of-way acquisition and construction for the period of June 30, 2004, to July 31, 2007, was \$29,169,176; and identified the following findings:

1. Metro is questioning \$402,951 in billed costs consisting of \$6,699 in construction costs for utility expenses that were not allocable to this MOU, and \$396,252 in billed costs that were incurred after the lapsing date of June 30, 2007.

Caltrans Response: There was no associated recommendation in the draft report for this finding. However, Caltrans has already reversed the costs that were not allocable to this MOU and amended the MOU to extend the lapsing date.

2. Caltrans was not in compliance with the terms of the MOU because it changed the percentage for the Proposition C fund allocation without written agreement from Metro's Project Manager. Metro auditors are recommending that Caltrans comply with the terms of the MOU and obtain mutual agreement in writing whenever there are changes to the funding allocation percentages. In addition, Metro auditors are recommending that a

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Mr. Robert Machuca
March 12, 2009
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close-out review be conducted as early as possible to determine if there are funds to be reprogrammed.

Caltrans Response: Caltrans believes that it did not violate the terms of the MOU because the lowest bidder's amount was less than the programmed amount. This resulted in a savings to capital costs. Caltrans believes that the MOU section cited by the auditors refers to changes that are beyond the original scope of the MOU. In this particular case, Caltrans believes that because there were no changes beyond the original scope of the MOU, it did not need to obtain mutual agreement in writing. Caltrans agrees with the recommendation that a close-out review be performed as early as possible.

3. Caltrans does not have an allocation plan to allocate rent expenses incurred by the Resident Engineer's (RE) office to fairly allocate these costs to projects sharing the same field office

Caltrans Response: Caltrans is in the process of developing a new process to allocate rental expenses to all the projects that are benefiting from a particular RE's office. The method for allocating rent expenses will be based on a logical, proportional method such as each project's construction contract amount.

Please see the attached memorandum from the Division of Program Project Management in District 7 for a complete response.

Caltrans appreciates the opportunity to respond to the draft review report. If you have any questions, or require additional information, please contact Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107, or Juanita Baier, Audit Supervisor, at (916) 323-7951.

Sincerely,



GERALD A. LONG
Deputy Director
Audits and Investigations

Attachment

- c: Ruthe Holden, Chief Auditor, Metro
Kathy Knox, Supervising Auditor, Metro
Andrew Lin, Auditor, Metro
Tim Dinh, Metro Audit Coordinator, District 7
Laurine Bohamera, Chief, Internal Audits, Audits and Investigations
Juanita Baier, Audit Supervisor, Audits and Investigations

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STATE OF CALIFORNIA--BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Arnold Schwarzenegger, Governor

DEPARTMENT OF TRANSPORTATION

Division of Program Project Management
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Memorandum

To: GERALD A. LONG
Deputy Director
Audits and Investigations

From: TAD TEFERI *Tad Teferi*
District 7 Deputy Director
Program Project Management

Subject: Los Angeles County Metropolitan Transportation of Realign and Widen Existing Highway, from 0.1km north of Sepulveda Boulevard undercrossing to 0.3km south of Route 101 and 405 Separation - MOU P8347 / EA 07-20120

The Los Angeles County Metropolitan Transportation Agency (Metro) audit identifies following Caltrans questionable undertaking:

• **Audit Finding:** The total project cost of \$29,169,176 was incurred from inception of the MOU to July 31, 2007. We questioned \$402,951, which consists of \$6,699 of construction cost for utility expenses that are not allocable to this MOU and \$396,252 (\$394,852 + \$1,400) of cost incurred after the lapsing date of June 30, 2007. Therefore, the allowable project cost is \$28,766,225, which includes \$5,143,530 right-of-way acquisition and \$23,622,695 construction cost. Metro's share in Prop C 25 percent fund of the total allowable project cost is \$2,900,951, or 56.4 percent and \$2,560,700, or 10.84 percent, for right-way-acquisition and construction cost. Caltrans was reimbursed \$1,797,392 and \$1,142,953 for right-of-way acquisition and construction. No retention has been withheld. The remaining balance on this MOU is \$5,147,255 which includes \$3,199,208 (\$4,996,600 - \$1,797,392) and \$1,948,047 (\$3,091,000 - \$1,142,953) for right-of-way acquisition and construction, respectively.

The MOU amendment has extended the time of lapsing date, and the unallocated cost of \$6,699 has been clarified by Caltrans Accounting and accepted LAMTA auditor.

• **Audit Finding:** Caltrans is not in compliance with their MOU terms and conditions. For the period under review Caltrans has under-run the project cost by \$2,521,306 because Caltrans unilaterally changed the Prop C fund allocation percentage without written agreement from Metro's Project Manager. During this review we were advised by Caltrans that the estimated construction cost for this project was lower than originally anticipated. Therefore, Caltrans unilaterally revised the MOU project cost and reduced the Prop C fund allocation percentage

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from 10.84 percent to 4.8 percent. The MOU includes funds from both Prop C and GARVEE bond funds. Since the GARVEE bonds fund could not be reduced, Caltrans reduced the Prop C funds from \$3,091,000 to \$1,299,000 which reduced the Prop C fund allocation percentage. In addition, Caltrans obtained funding from the City of Los Angeles which is not listed as a source of funds in this MOU. See appendix for detailed result of review.

Section 11.1 of Part II – General Terms of the Financial Agreement (FA), of the MOU states, *“This FA, and its Attachments and the reference Guidelines, constitute the entire understanding between the parties with respect to the Project and the Funds. The FA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties.”*

The lowest bidder was less than the MOU amount (programmed amount) which resulted in a saving of capital cost. The Department is not required to go back to CTC or renegotiate the MOU whenever there is a small saving on the contract.

The audit finding reference to section 11.1 of Part II - General Terms of the Financial Agreement (FA), *“This FA, and its Attachments and the reference Guidelines, constitute the entire understanding between the parties with respect to the Project and the Funds. The FA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties.”* has not been violated. The intention of this section is both parties have to approve changes that are beyond the original scope of the MOU, either in term of project cost or schedule. The project cost in this case was entirely within the programmed amount, thus it should not require an adjustment to MOU in writing.

- **Audit Finding:** Caltrans does not have an allocation plan to allocate rent expense incurred by the Resident Engineer's (RE) office to fairly allocate these costs for projects sharing the same project field office. The current practice is to arbitrarily charge rent expense by randomly selecting projects to charge through out the fiscal years. There is no matching of these expenses to applicable projects in an objective and reasonable manner.

Contract Term Part II, section 5.2 of this MOU stated that Metro shall use applicable Federal Acquisition Regulations (FAR) in determining the reasonableness of project costs incurred. FAR Subpart 31.201-4, Determining allocability, states, *“A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received...”*

Caltrans did not allocate this expense to the MOU on the basis the benefit received by the applicable project. We believe by not having a proper allocation plan, rent expense for this project could result in over billing of project expense to Metro. For this MOU, the cost associated with the project is considered immaterial. However, we believe it should be noted in the event future cost becomes significant.

In the near future, Caltrans District 7 will implement a new process to split each month's rent costs across the projects/EAs that are supported by the people working in the Resident Engineer office. The split can be communicated to Accounting either by the receiving record or, if one is not completed, by a memo. The split

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will be updated as the projects being worked on out of the office changes. Methods for the split will be some logical proportional method -something like each EA getting the percentage of the rent cost based on the project's construction contract amounts.

Should you have any questions regarding this response, please contact Javad Rahimzadeh at (213) 897-6846.

cc: Juanita Baier, A&I
Laurine Bohamera, A&I
William Lewis, Chief, Accounts Receivable Branch, DoFA
Judy Armstrong, Chief, Reimbursement Section, DoFA
Gloria Madriz, District 7 Reimbursement Accountant, DoFA
Cindy Wu, District 7 Reimbursement Accountant, DoFA